

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNITED STATES OF AMERICA FOR
THE USE AND BENEFIT OF
ELLIOTT ELECTRIC SUPPLY, INC.

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CIVIL ACTION NUMBER

vs.

6:16-cv-197

JAM-MAP JV, LLC and THE HANOVER
INSURANCE COMPANY

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, United States of America For The Use And Benefit Of Elliott Electric Supply, Inc., hereinafter referred to as Plaintiff, complaining of JAM-MAP JV, LLC, hereinafter referred to as Defendant JAM-MAP, and The Hanover Insurance Company, hereinafter referred to as Defendant Hanover, and collectively as Defendants.

I.
PARTIES

1.1 Plaintiff is a corporation duly incorporated pursuant to the laws of the State of Texas.

1.2 Defendant JAM-MAP JV, LLC is a limited liability company organized pursuant to the laws of the State of Texas and may be served with process by having the summons and a copy of this complaint delivered to its Registered Agent, Samantha Garcia, at 427 West Cevallos, San Antonio, Bexar County, Texas 78204.

1.3 Defendant The Hanover Insurance Company is an insurance company incorporated pursuant to the laws of the State of New Hampshire whose principal office and place of business is

in the State of Massachusetts and may be served with process by delivering the summons and a copy of this complaint to its Attorney for Service, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Dallas County, Texas 75201, by and through an agent authorized to accept service of process at that location.

II.

JURISDICTION AND VENUE

2.1 This Court has original jurisdiction pursuant to 28 U.S.C. 1331, as the claim(s) asserted herein arise under 40 U.S.C. 3133 *et seq.*, commonly known as The Miller Act.

2.2 This Court has supplemental jurisdiction pursuant to 28 U.S.C. §1331, as this suit is based upon a claim for materials supplied to a subcontractor for work for the construction, alteration, or repair of a public building or public work of the United States, which is governed by federal law.

2.3 Venue is proper in this District under 40 U.S.C. §3133(3), as the contract which is the subject matter of this suit was performed in Fort Hood, Texas.

III.

CAUSE OF ACTION

3.1 Pursuant to 40 U.S.C. §3131, commonly known as the Miller Act, before any contract exceeding \$100,000.00 in amount for the construction, alteration or repair of any public building or public work for or on the property of the United States is awarded to any person, such person shall furnish a payment bond for the protection of all persons supplying labor and material in the prosecution of the work provided in said contract for the benefit and use of the persons so supplying labor and material.

3.2. Heretofore, the United States of America awarded a construction contract to Defendant JAM-MAP for the construction and/or renovation known as FY12 UAS Site Work-

Utilities ECP, Fort Hood, Texas, Contract No. W9126G-C-0016, Said contract was in excess of \$100,000.00 and was for the construction, alteration, or repair of a public building or public work of the United States.

3.3 As required by the Miller Act, Defendant JAM-MAP, as principal, and Defendant Hanover, as surety, executed a payment bond for the use and benefit of all persons supplying labor and/or material in the prosecution of the work provided in said contract, Bond No. 1030724. Plaintiff supplied materials in the prosecution of the work provided in said contract and, therefore, is a direct obligee and beneficiary of said bond. A copy of said payment bond is attached hereto as Exhibit "A."

3.4. Defendant JAM-MAP, as prime contractor, awarded a subcontract to YZ Corporation ("YZ Corporation") for a portion of the above-referenced contract. YZ Corporation in turn contracted with Plaintiff for the purchase of electrical materials to be used in the performance of said subcontract and prime contract. The total agreed unpaid principal price for the materials supplied by Plaintiff to YZ Corporation is \$40,142.20.

3.5 Plaintiff has given all statutory notice required to perfect its claim on the subject payment bond. All conditions precedent pertaining to Plaintiff's perfection of its claim on the subject payment bond have been performed or have occurred. Plaintiff has perfected its payment bond claim against both Defendants in the amount of \$40,142.20, pursuant to the provisions of the Miller Act. Demand for payment has been made on Defendants, but payment has not been made, all to Plaintiff's damage. Defendants are jointly and severally liable to Plaintiff for all claims asserted herein.

3.6 Plaintiff is also entitled to statutory prejudgment and post-judgment interest as may be allowed by law. Plaintiff is further entitled to reasonable attorneys' fees and costs against Defendants.

IV.
REQUEST FOR RELIEF

4.1 WHEREFORE, Plaintiff prays that Defendants be cited to appear herein as provided by law, and that upon final hearing hereof, that Plaintiff have judgment of and from JAM-MAP JV, LLC and The Hanover Insurance Company, jointly and severally, for such sum of \$40,142.20, plus interest, attorneys' fees, costs, and such other and further relief to which Plaintiff may show itself entitled.

Respectfully submitted,

**MATTHEWS, SHIELS, KNOTT,
EDEN, DAVIS & BEANLAND, L.L.P.**

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